

CHAPTER NO. 902**HOUSE BILL NO. 3252****By Representatives Briley, Beavers, Brenda Turner****Substituted for: Senate Bill No. 3252****By Senator Fowler**

AN ACT to amend Tennessee Code Annotated, Title 56, relative to reports on medical malpractice claims.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, is amended by adding the following as a new appropriately designated section:

56-__-__

(a) The following shall submit to the department of commerce and insurance a report relating to claims for medical or professional malpractice as set forth herein. Anyone required to report hereunder shall be referred to as a "reporting entity":

(1) Every insurance company or risk retention group providing medical malpractice or professional liability insurance to a Tennessee health care institution licensed under title 68;

(2) Every insurance company or risk retention group providing medical malpractice or professional liability insurance to any of the following Tennessee health care professionals licensed pursuant to title 63:

- (A) Podiatrists
- (B) Chiropractors
- (C) Dentists
- (D) Medical and Osteopathic Physicians
- (E) Nurse Practitioners
- (F) Optometrists
- (G) Psychologists
- (H) Pharmacists
- (I) Physician Assistants
- (J) Professional Counselors

(K) Marital and Family Therapists

(L) Clinical Pastoral Counselors

(M) Licensed Clinical Social Workers; and

(3) Every health care institution, or professional listed in subsection (2), except the state and those employed by the state, who does not maintain professional liability insurance.

(b) The report shall be filed on or before April 1 of each year beginning April 1, 2005 and shall cover the preceding calendar year.

(c) The initial report filed shall provide the following:

(1) The number of claims made and the amount of damages asserted, if known, other than claims set forth in lawsuits, listed by type of provider and an indication of specialty if any;

(2) Lawsuits filed and damages claimed therein, listed by type of provider and an indication of specialty if any;

(3) The amount paid on claims, with a separate list of amounts paid by settlement and amounts paid pursuant to a judgment. To the extent possible, the information submitted pursuant to this item should identify separate amounts paid for punitive, compensatory and non-economic damages; and

(4) With regard to each claim reported under subdivision (3), the reporting entity shall also list separately, if available, expenses, including attorney fees paid to defense counsel, the portion of any settlement or judgment received by claimant's counsel, expert witness fees, court costs and deposition costs. Counsel for claimants asserting claims covered by this section shall provide information about fee arrangements to facilitate reporting required by this subdivision (4).

(d) The second and subsequent reports filed pursuant to this section shall contain, in addition to the information set forth in subsection (c), information identifying those claims that are the subject of settlement or judgment which were contained in a prior report as a pending claim.

(e) The claims reports filed pursuant to subsections (c) and (d) shall include information as to the date of occurrence that is the subject of each claim and the claimant's social security number.

(f) The department of commerce and insurance shall submit an annual report to the speaker of the senate and the speaker of the house of representatives summarizing the information submitted pursuant to this section. Such annual report shall be submitted on or before September 1 of each year beginning September 1, 2005. Any report shall contain aggregate data only and shall not identify any individual entity or health care provider. The annual report compiled by the department shall aggregate

total settlement and judgment to all health care providers in connection with a single occurrence, provided that such report shall not contain any claimant's social security number.

(g) The information submitted to the department of commerce and insurance pursuant to this section shall be used solely for the purpose of analyzing trends in health care liability claims. Provided however, the information received pursuant to subdivision (c)(3) of this section and any subsequent reports concerning the specific information required by subsections (d) and (e) of this section that pertains to judgments and settlements paid as to any medical and/or osteopathic physician and/or dentist shall be sent to the department of health, division of health related boards and the provisions of subsection (h) of this section shall apply to such reports.

(h) The information submitted to the department of commerce and insurance pursuant to this section shall be confidential, shall not be subject to public inspection, shall not be subject to discovery, subpoena or legal compulsion for release to any person or entity, and shall not be admissible in any criminal civil or administrative proceeding.

(i) Nothing in this section shall be construed to prevent parties to a liability claim or legal action from entering into a settlement of that claim on a confidential basis. Any such agreement shall be mutually binding on all parties by the terms of the agreement, with the exception that any party required to report under this act shall do so and such reporting shall not be considered a breach of any confidential settlement agreement.

(j) The commissioner of commerce and insurance is authorized to promulgate rules to effectuate this section.

(k) The commissioner of commerce and insurance is authorized to enforce the provisions of this act against any entity required to report hereunder, including any health care institution or professional listed in subdivision (a)(2) that does not maintain insurance. Such enforcement power shall be to the same extent the commissioner may enforce this section against insurers required to report hereunder.

(l) The commissioner of commerce and insurance may levy a civil penalty in the amount of one hundred dollars (\$100) per day upon a reporting entity that fails to comply with this part.

SECTION 2. Any cost incurred by the department of commerce and insurance associated with the implementation of SECTION 1 shall be paid out of existing reserves of the insurance division of the department of commerce and insurance.

SECTION 3. Tennessee Code Annotated, Section 56-3-111, is amended by deleting subsections (a), (b) and (c) in their entireties and substituting instead the following new subsections (a), (b) and (c):

(a) Insurance companies providing insurance coverage against civil liability for the death or personal injury of any person as the result of negligence or malpractice, in the rendering of professional services by a licensed physician, either doctor of osteopathic medicine or doctor of medicine, or by a licensed dentist shall report to the state board of medical examiners or state board of osteopathic examination or the state

board of dentistry any settlement of a claim or judgment, sealed, confidential or otherwise, of five thousand dollars (\$5,000) or more which arises out of a claim of negligence or malpractice on the part of an insured physician or dentist as distinguished from administrative matters. Such report shall be made within thirty (30) days of the settlement or judgment and shall contain only the following information:

- (1) The name and address of the licensed physician or dentist;
- (2) The name and address of the plaintiff;
- (3) The name of the patient, if different from the plaintiff;
- (4) The name and location of the court in which a claim was filed, if any;
- (5) The amount of any judgment or settlement; and
- (6) The identity of the insurance company and the person filling out the report.

(b) The reports shall be confidential, shall not be subject to public inspection, shall not be subject to subpoena or used as evidence in any legal proceeding, civil or criminal. Provided however, the reported judgments and settlements contained in the reports, except those that are ordered sealed or to remain confidential by a court of competent jurisdiction, may be used to fulfill the requirements of the Consumer Right to Know Act of 1998 but may not be used to initiate or prosecute any administrative proceeding before the board for licensing health care facilities.

(c) No insurance company, official, or other person authorized by an insurance company to issue such reports shall be liable for filing reports in accordance with this section, so long as the report is not disclosed to anyone other than authorized personnel of the state board of medical examiners, state board of osteopathic examination or the state board of dentistry, or the reported judgments and settlements contained in the reports, except those that are ordered sealed or to remain confidential by a court of competent jurisdiction are used to fulfill the requirements of the Consumer Right to Know Act of 1998.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect upon becoming law, the public welfare requiring it. Sections 1 and 2 of this act shall be void on September 30, 2008.

PASSED: May 20, 2004


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 7th day of June 2004


PHIL BREDESEN, GOVERNOR